

Attorneys for Defendant  
ZONEPERFECT NUTRITION COMPANY

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

JAMES COLUCCI and KIMBERLY S.  
SETHAVANISH,

Plaintiffs,

VS.

ZONEPERFECT NUTRITION COMPANY,

Defendant.

CASE NO. 11-CV-04561 SC

## STIPULATION AND ~~PROPOSED~~ ORDER EXTENDING DEADLINES

1 WHEREAS, Plaintiffs filed a First Amended Complaint in the above-captioned case on or  
2 about September 14, 2011;

3 WHEREAS, on or about November 30, 2011, this case was reassigned to the Honorable  
4 Samuel Conti;

5 WHEREAS, in response to Defendants' Motion to Dismiss filed February 10, 2012,  
6 Plaintiffs filed a First Amended Complaint on March 2, 2012;

7 WHEREAS, the parties anticipate that Defendant will file another Motion to Dismiss, and  
8 that this motion will be long and complex—raising *inter alia* issues of federal regulatory policy,  
9 federal preemption, and matters of statutory application under California—such that the parties agree  
10 that, in accordance with the Commentary to Local Rule 7-2, an extended briefing schedule will best  
11 allow the parties to adequately and appropriately present the relevant issues to the Court;

12 WHEREAS, the parties further agree that, particularly as this case is a putative class action  
13 and Defendant's motion is potentially dispositive of this case, it would best conserve the resources of  
14 the parties and the Court to postpone the initial Case Management Conference until after the Court  
15 rules on Defendant's forthcoming Motion to Dismiss, which will best allow the parties to assess the  
16 appropriate scope and timing of further proceedings in this case for presentation to the Court;

17 WHEREAS, on September 30, November 2, November 12, 2011, and December 16, 2011  
18 the parties entered into stipulations to extend the time for the Defendant to answer, move, or  
19 otherwise respond to Plaintiffs' Complaint and reschedule the Case Management Conference, now  
20 set for April 6, 2012;

21 WHEREAS, since the Plaintiffs filed the Amended Complaint on March 2, 2012, neither the  
22 Plaintiffs nor the Defendant have sought a stipulation or an extension; and

23 WHEREAS, the parties having confirmed the availability of June 22, 2012 as an available  
24 date on the Court's calendar for a Case Management Conference;

IT IS HEREBY STIPULATED AND AGREED by the parties, through their counsel, that the parties shall adhere to the following schedule for the briefing of the Defendant's expected motion, the Case Management Conference, and related deadlines:

- (i) Defendant shall have until March 30, 2012, to file a Motion to Dismiss the First Amended Complaint;
- (ii) Plaintiffs shall have until April 27, 2012, to file an Opposition to the Motion to Dismiss the First Amended Complaint;
- (iii) Defendant shall have until May 11, 2012, to Reply to the Plaintiffs' Opposition;
- (iv) Defendant shall notice a hearing on its Motion to Dismiss for May 25, 2012;
- (v) The Case Management Conference shall be held on June 22, 2012, or such later time as is convenient for the Court, with the parties to file one Joint Case Management Statement seven days prior to the conference.

IT IS SO STIPULATED.

Respectfully submitted,

KIRKLAND & ELLIS LLP

DATED: March 9, 2012

By: /s/ Elizabeth L. Deeley

Elizabeth L. Deeley

Attorneys for Defendant  
ZONEPERFECT NUTRITION COMPANY

LAW OFFICE OF JANET LINDNER SPIELBERG

DATED: March 9, 2012

By: /s/ Janet Lindner Spielberg

Janet Lindner Spielberg<sup>1</sup>

Attorneys for Plaintiffs  
JAMES COLUCCI and KIMBERLY S.  
SETHAVANISH



<sup>1</sup> I, Elizabeth L. Deeley, am the ECF user whose ID and password are being used to file this Stipulation and [Proposed] Order Extending Deadlines. In compliance with General Order 45, X.B., I hereby attest that the following attorneys have concurred in this filing: Janet Lindner Spielberg, counsel for Plaintiffs, James Colucci and Kimberley S. Sethavanish.

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED: \_\_\_\_\_, 2012

\_\_\_\_\_  
The Honorable Samuel Conti

**CERTIFICATE OF SERVICE**

The undersigned hereby certify that all counsel of record who have consented to electronic service are being served with a copy of the attached **STIPULATION AND [PROPOSED] ORDER EXTENDING DEADLINES** via the CM/ECF system on March 9, 2012.

DATED: March 9, 2012

By: /s/ Elizabeth L. Deeley  
Elizabeth Deeley